

# Memorandum

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**To:** FCC, Office of the Secretary  
**From:** Marci L. White, Kellogg & Sovereign Consulting, LLC  
**Date:** June 12, 2018  
**Re:** Request for Review and/or Waiver, CC Docket No. 02-60

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On behalf of CREOKS Behavioral Health Services (CREOKS), I am respectfully requesting review of an appeal denial by USAC, and if necessary a waiver of section 54.720(b) of the Commission's rules.

In attempting to de-commit FY 2015 funding it was not going to use, CREOKS inadvertently used the year 2016 instead of the year 2015 in the de-commitment request filed on August 3, 2016. As a result, USAC calculated the wrong amount for the resulting funding commitment. Neither CREOKS nor USAC could determine the source of the funding amount discrepancy that was caused by the typographical error. From October 2016 to February 2017, CREOKS, through its consultant Kellogg & Sovereign Consulting, LCC (KSLLC), worked with USAC to try to determine the source of the error.<sup>1</sup>

As soon as the mistake was identified and USAC told KSLLC that an appeal had to be filed to correct the clerical error, CREOKS filed an appeal with USAC on February 21, 2017.<sup>2</sup> USAC denied CREOKS' appeal on the ground that it had been filed late.<sup>3</sup> USAC believed CREOKS should have filed an appeal by October 29, 2016—60 days after receiving the notice to de-commit, even though KSLLC had told USAC the amounts were incorrect on October 16, 2016. As result of this typographical error that USAC could have easily corrected, CREOKS stands to lose approximately \$28,000 in funding.

Under these circumstances, USAC should have allowed CREOKS to correct what was simply a clerical error and allowed CREOKS to receive the appropriate amount of funding. We ask the Commission to instruct USAC to make the requested correction, and to waive its rules as necessary to grant this relief.

## Background

CREOKS filed an FCC Form 461 and an RFP in May 2015. After evaluating the bids, CREOKS issued an award letter to Windstream Communications, signed a contract for services, and requested Rural Health Care funding (FRN 15779671). On May 25, 2016, USAC issued a funding commitment decision in the amount of \$449,683.65.

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<sup>1</sup> See Attached Timeline and Exhibits, Exhibits 4 through 13, correspondence with USAC regarding discrepancy.

<sup>2</sup> See Attached Timeline and Exhibits, Exhibit 14, CREOKS Appeal to USAC filed on February 21, 2017.

<sup>3</sup> See Attached Timeline and Exhibits, Exhibit 15, USAC Denial.

On August 3, 2016, KSLLC sent an email to USAC requesting that adjustments be made to the funding start dates for the funding commitment, as the service start dates were later than anticipated and overlapped the pending funding request for services with the previous provider, Cox Communications. KSLLC exchanged emails with USAC to confirm the de-commitment dates for the Windstream service. In an August 4, 2016 email, KSLLC entered the wrong end date for the de-commitment period: the de-commitment dates should have been October 1, 2015 to December 21, 2015, but KSLLC accidentally entered the end date as December 21, 2016.

As a result of the incorrect date, the de-commitment amount was larger than it should have been. It was not immediately apparent to KSLLC and CREOKS why this was so, but in October 2016, KSLLC emailed USAC to notify them that there was a discrepancy and began the process of figuring out what had happened to cause the discrepancy. Eventually, KSLLC realized that it had entered the wrong end date, as described above. After exchanging several emails with USAC, in February 2017 USAC told KSLLC that it would need to file an appeal to correct the date. KSLLC immediately filed an appeal as instructed.

On April 13, 2018, USAC denied the appeal. USAC stated that KSLLC should have filed the appeal by October 29, 2016, which was 60 days from the date of USAC's Notification of De-Commitment. KSLLC is now appealing USAC's denial to the Commission.

## Argument

The bottom line is that KSLLC was simply trying to fix an error in a funding *de-commitment* request and thought it was working with USAC to do so. It is unfortunate that an appeal with the FCC is necessary in order to try to correct this simple mistake. KSLLC respectfully asks that the Commission to grant this appeal and direct USAC to correct the clerical error on the de-commitment request so that CREOKS can receive the correct amount of funding. KSLLC also asks the Commission to waive its rules as necessary to grant this appeal.

Any of the Commission's rules may be waived if good cause is shown.<sup>4</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>6</sup>

Commission precedent supports allowing universal service applicants, including those in the Rural Health Care program, to correct ministerial and clerical errors such as the one at issue in this appeal.<sup>7</sup> We respectfully request that the Bureau grant this waiver request as well. Here, CREOKS

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<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, 29 FCC Rcd 12721, 12727 & nn. 12-13 (granting an appeal by Chippewa Valley Hospital to correct a ministerial or clerical error). As support for granting this appeal, the Bureau cited the *Healthcare Connect Fund Order* and the *Bishop Perry Order*, a Schools and Libraries decision. See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16791-92, para. 243 & n.624 (2012) (allowing health care providers the opportunity to correct clerical or ministerial mistakes in their funding applications); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and*

made every effort to correct a typo promptly as soon as it was discovered. We believe allowing CREOKS to correct the typographical error is in the public interest and consistent with Commission precedent.

Further, to the extent necessary, KSLLC requests that the Commission waive its rule to accept the appeal filed with USAC as timely. USAC's denial acknowledged the M&C error was not identified until December 2016 – more than a month after the date by which USAC said CREOKS should have filed its appeal. It was literally impossible for CREOKS to have filed an appeal by the filing deadline, because at that time it did not yet know what it was appealing or that it had to file an appeal at all. KSLLC was under the impression that USAC could simply fix the typographical error, without going through an appeal process, because USAC had indicated it would investigate the discrepancy.

Furthermore, USAC was aware of this situation. As the attached timeline shows, KSLLC was in constant contact with USAC over the winter of 2016-2017, trying to figure out what had caused the discrepancy in the requested de-commitment amount, and how to correct it. In February 2017, USAC advised KSLLC that it needed to file an appeal in order to correct the M&C error. KSLLC filed the appeal immediately. We believe USAC should not have calculated the appeal filing deadline based on its Notice of De-Commitment because CREOKS did not yet know what was wrong and did not know until the following February that it needed to file an appeal to fix a simple M&C error.

For these reasons, we ask the Commission to grant the requested appeal and/or waive its rules as necessary to grant the requested relief.

Respectfully submitted,

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*Libraries Universal Service Support Mechanism*, CC Docket No. 02- 6, Order, 21 FCC Rcd 5316, 5326-27, paras. 22-23 (2006) (directing USAC to provide applicants with an opportunity to cure ministerial and clerical errors on the FCC Forms that they submit to USAC).